

HOUSE No. 4187

The Commonwealth of Massachusetts

By Ms. Forry of Boston, for the committee on Community Development and Small Business, on
Senate, No. 91, a Bill relative to gasoline dealers (House, No. 4187). July 29, 2009

An Act RELATIVE TO GASOLINE DEALERS.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Linda Dorcena Forry	12th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act RELATIVE TO GASOLINE DEALERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 93E of the General Laws is hereby amended by striking out section 1, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:--

Section 1. For the purposes of this chapter, unless the context clearly requires otherwise, the following words shall have the following meanings:—

“Book value”, actual cost less actual depreciation taken.

“Dealer”, any person who is not a petroleum supplier and who is engaged in the retail sale of gasoline to the motoring public under written agreements entered into with a petroleum supplier.

“Marketing agreement”, any agreement either written or oral between a supplier and a retail dealer under which (1) the retail dealer promises to sell or distribute the produce or products of the supplier; (2) the retail dealer is granted the right to use a trademark, trade name,

service mark or other identifying symbol or name owned by a manufacturer; or (3) the retail dealer is granted the right to occupy premises owned, leased or controlled by a supplier.

“Marketing premises”, the premises used by a dealer in connection with the sale, consignment or distribution of motor fuel.

“Person”, any individual, firm, fiduciary, partnership, corporation, trust or association.

“Producer”, a person who uses component elements to manufacture gasoline products.

“Refiner”, a person who owns, operates or controls an oil refinery.

“Supplier”, any person engaged in the sale, consignment or distribution of petroleum products to retail outlets.

SECTION 2. Said chapter 93E is hereby amended by inserting after section 5A the following section:--

Section 5B. (a) To the extent not preempted by the Petroleum Marketing Practices Act, 15 U.S.C. Sections 2801 to 2806, inclusive, no producer or refiner that owns a fee simple interest in a marketing premises which is leased to a dealer, shall sell, transfer or assign such interest unless such producer or refiner has:

(i) made a bona fide offer to sell, transfer or assign such interest to the lessee dealer, but such offer may exclude signs displaying the insignia or any other trademark, service mark, copyright or patented equipment of the producer or refiner; or

(ii) offered a right of first refusal of any bona fide offer acceptable to the producer or refiner to purchase such interest to the lessee dealer.

(b) To the extent not preempted by federal law no producer or refiner that owns a fee simple interest in a marketing premises and leases such premises to a third party that subleases such premises to a dealer shall sell, transfer or assign such interest unless the producer or refiner has:

(i) (A) made a bona fide offer to sell, transfer or assign such interest to the sublessee dealer; and (B) made a bona fide offer to sell, transfer or assign the producer's or refiner's interest in any improvements to such premises or equipment located thereon at a price not exceeding the greater of the fair market value or the book value of such improvements and equipment, but such offer may exclude signs displaying the insignia or any other trademark, service mark, copyright or patented equipment of such producer or refiner; or

(ii) offered a right of first refusal of any bona fide offer acceptable to the producer or refiner to purchase such interest and the improvements to the premises and equipment located thereon to the sublessee dealer.

SECTION 3. This act shall apply to agreements executed on and after on January 1, 2009.